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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,392	08/09/2001	Daniel T. Barber	7094-159	5175

54303 7590 06/28/2006

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INDIANAPOLIS, IN 46204-2079

EXAMINER
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LIEU, JULIE BICHNGOC

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,392

Applicant(s)

BARBER ET AL.

Examiner

Julie Lieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-24 is/are allowed.
- 6) ☒ Claim(s) 1,5-10,14,15,25-28,30 and 32-34 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 11- 13, 29, and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This office action is in response to Applicant's amendment filed April 21, 2006. Claim 3 has been amended.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 102*

3. Claims 1-10, 14, and 15 are again rejected under 35 U.S.C. 102(b) as being anticipated by Su (US Patent No. 5,815,090).

#### Claim 1:

Su discloses a system, thus also a method, comprising:

- a. installing one or more species of pests with a plurality of pest control devices each including a respective bait for one or more species of pest, a respective pest sensor, and respective communication circuitry coupled to the respective pest sensor (see figs. 3-5, also col. 3, last paragraph)
- b. providing a stimulus (col. 3, lines 55-64) to one of the pest control devices to cause the respective communication circuitry to output information about the respective pest sensor; and

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c. in response to the stimulus, receiving the status information from one of the pest control devices.

Claim 5:

The information obtained from the detectors in Su inherently quantizes an amount of consumption or displacement of the respective bait by the one or more species of pest.

Claim 6:

The respective bait for the one of the pest control devices includes a pesticide. Col. 7, lines 36-56.

Claim 7:

The respective bait is of a monitoring type selected for one or more varieties of termites.

Claim 8:

The respective pest sensor in Su includes a corresponding one of a plurality of pest sensing circuits, the corresponding one of the pest sensing circuits for the one of the pest control devices includes an electrically conductive loop arranged to be altered during consumption or displacement of the respective bait for the one of the pest control devices, the loop is coupled to the respective communication circuitry to provide a two-state signal, a first state of the signal corresponds to an electrically open condition of the loop, a second state of the signal corresponds to an electrically closed condition of the loop, and the information correspond to the two-state signal. Col. 3, last paragraph. Also see figs. 3-5.

Claim 9:

Su places one or more of the pest control devices at least partially below ground.

Claim 10:

Su discloses a pest control system, comprising a first pest control devices each including a respective bait for operable to be consumed or displaced by one or more species of pest, a first electrical monitoring circuit to monitor status of the first pest sensing member, a first activation device operable to trigger operation of the first electrical monitoring circuit (col. 3, lines 55-64), and a first indication device, the computer monitor, responsive to the output form the first electrical monitoring circuit to provide information about the first pest sensing member.

See figs. 3-5, also col. 3, last paragraph.

Su discloses using a plurality of the device, therefore, a second device as that of the first device is inherent.

Claims 14:

The respective bait for the one of the pest control devices includes a pesticide. Col. 7, lines 36-56.

Claim 15:

The respective bait is of a monitoring type selected for one or more varieties of termites.

***Claim Rejections - 35 USC § 103***

4. Claims 2, 25-30 and 32-34 is again rejected under 35 U.S.C. 103(a) as being unpatentable over Su (US Patent No. 5,815,090).

Claim 2:

The pest control device in Su does not have a mechanical device that is actuated to provide the stimulus to activate the communication circuit. However, one skilled in the art

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would have readily recognized adding an mechanical on/off switch to allowing an operator in Su to initiate the interrogation as desired because it would be advantageous to be able to obtain the information whenever desired by an operator or when necessary.

Claims 25 and 26:

Su discloses a plurality of pest control devices each including:

- a. a bait operable to be consumed or displaced by one or more species of pest; and
- b. monitoring circuitry including a pest sensing circuit, an indicating device (the computer monitor), the activation device being operable to selectively activate the monitoring circuitry and the indicating device being operable to provide the operator information about the pest sensing circuit in response to activation of said monitoring circuitry with the activation device.

The reference fails to disclose an activation device. However, it would have been obvious to one skilled in the art to provide an activation device to that the device, such as a power on/off switch so that the device can be selectively turned on and off at the operator's will.

Claim 27:

The indicating device in Su a visual indicator, which is the computer monitor.

Claim 28:

The respective pest sensor in Su includes a corresponding one of a plurality of pest sensing circuits, the corresponding one of the pest sensing circuits for the one of the pest control devices includes an electrically conductive loop arranged to be altered during consumption or displacement of the respective bait for the one of the pest control devices, the loop is coupled to the respective communication circuitry to provide a two-state signal, a first state of the signal

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corresponds to an electrically open condition of the loop, a second state of the signal corresponds to an electrically closed condition of the loop. Col. 3, last paragraph. Also see figs. 3-5.

Claim 30:

The housing of the pest detecting device in Su comprises a housing at least partially closing the bait and the monitoring circuitry.

Claim 32:

The bait used in Su includes a pesticide. Col. 7, lines 36-56.

Claim 33:

The respective bait is of a monitoring type selected for one or more varieties of termites.

Claim 34:

The pest sensing circuit in Su is carried on a substrate operable to selectively connected and disconnected from the monitoring circuitry. Figs. 5a and 5b.

*Allowable Subject Matter*

5. Claims 16-24 are allowed.

6. Claims 11-13, 29, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Applicant's Arguments*

7. The applicant has presented the following arguments:

Argument 1:

Regarding claim 1, the applicant has argued that the wired sensor embodiment of Su lack pest control devices each including respective communication circuitry coupled to the respective sensor and asserted that there is no description of how Su's wireless link version may operate. The applicant has further asserted that Su's sensor operate one-way to the data collection unit without any type of stimulus.

Argument 2:

With respect to claim 5, the applicant has contended that Su's detection circuit is either open or closed, thus there is no quantization involved.

Argument 3:

Regarding claim 6, the applicant has argued that Su fails to disclose the use of pesticide or toxin.

Argument 4:

Regarding claim 10, the applicant has submitted that Su fails to disclose multiple activation devices specific to each pest control device used to trigger the operation of the



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monitoring circuit and has further contended that Su fails to disclose an indicating device for each of the multiple pest control devices.

Argument 5:

Regarding claim 2, the applicant has asserted that Su is directed to providing a remote monitoring system that avoids operator activation. The applicant has also contended that the mere fact that the prior may be modified does not make the modification obvious unless the prior art suggests it and if the proposed modification render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation for such proposed modification.

*Response to Applicant's Argument*

8. Applicant's arguments filed 4/21/06 have been fully considered but they are not persuasive.

Response to Argument 1:

The examiner submits that each sensor in Su's includes its own communication circuitry, which is coupled to the data collection unit as clearly shown in front-page figure.

Regarding the claimed stimulus, the stimulus in Su's device is the discontinuity of the conductive circuit of the sensor device.

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The fact the there is no description of how Su's wireless link version may operate seems not be relevant to claim 1, since claim 1 does not recite wireless link. Moreover, even if claim 1 does recited wireless link, the reference would meet the claimed limitation. The use of wireless sensor is very old and conventional in the art; thus, there is no requirement for Su to disclose in details how the wireless link in the reference operates.

Response to Argument 2:

It is submitted that "quantization" could be broadly interpreted as when the circuit is eaten to the point that it is broken or how many sensors provide the signal that termites were detected.

Response to Argument 3:

The reference clearly discloses the use of pesticides or toxins. See col. 7, lines 48-51, wherein it is stated, "when termites are detected, the toxicant-containing matrix is utilized until no termite activity is detected in the toxicant delivery device."

Response to Argument 4:

The applicant's argument is not deemed relevant because the claim does not recite "multiple activation devices" specific for each pest control device.

Response to Argument 5:

It is submitted that though there is no suggestion in reference for the modification, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Also, it is not necessary that the reference expressly suggests in so many words the modification. One skilled in the art would have readily recognized the desirability to provide the option of adding a mechanical device such as a switch operable by the operator to allow activation of the device as desired.

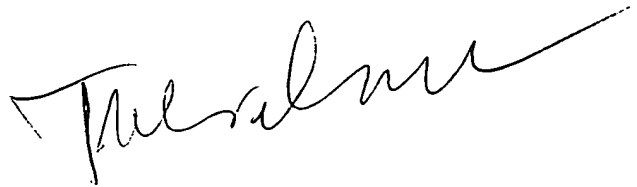
For the above stated reasons, the rejection is maintained.

### *Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on MaxiFlex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 571-272-3068. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Julie Lieu', with a long, sweeping horizontal line extending to the right.

Julie Lieu  
Primary Examiner  
Art Unit 2612

Jan 16, 05